



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/173455

PRELIMINARY RECITALS

Pursuant to a petition filed April 05, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on April 28, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether the agency met its burden to show that it correctly terminated petitioner's 7-year-old son's BadgerCare Plus effective May 1, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

■
■

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], ES Supv.

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County. She had a renewal for BadgerCare Plus (BCP) for her two oldest children (ages 5 and 7) due at the end of May 2016. Petitioner completed her review timely. BCP was ultimately open for the two children for April.
2. In April 2016 petitioner reported household earnings and student loan interest to the agency. On April 26, 2016 the agency issued a notice to petitioner stating that effective May 1, 2016 her 7 year old would be ineligible for BCP because he had access to employer sponsored insurance (his father's employer pays for at least 80% of the health insurance premiums).
3. There are five persons in the petitioner's household.
4. The petitioner's total monthly household income was \$4,250.43 for May 2016.
5. The petitioner's total monthly household income was \$3,785.94 for June 2016.
6. The 100% federal poverty level for a five-person household is \$2370; 156% of the federal poverty level for a five-person household is \$3697.20; 191% of the federal poverty level for a five-person household is \$4526.70. *BadgerCare Plus Handbook*, § 50.1.

DISCUSSION

BCP is Wisconsin's Medicaid program for those who are not elderly, blind, or disabled. Wis. Stat. §49.471. The agency notified the petitioner that one of her children's BCP would end on May 1, 2016, because her husband's job provides health insurance and pays for at least 80% of the premium and her household income exceeds the program's limit for that specific child (the 7 year old).

Generally, adults are ineligible for BCP if their household's income exceeds 100% of the federal poverty level and children are ineligible if it exceeds 300% of the federal poverty level. Wis. Stat. §49.471(4)(a). The 100% federal poverty level for a five-person household is \$2370. *BadgerCare Plus Handbook*, §50.1 (available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>). The petitioner's gross monthly household income is \$4,250.43 for May, which at 179% of the federal poverty level is over the limit for adults but under the limit for children.

But the BCP program's policies also limit coverage to those with access to insurance. Those policies set the income limits for those with access to insurance in which an employer pays at least 80% of the policy's premiums. See *BadgerCare Plus Handbook*, §7.3.2; see also Wis. Stat. §49.471(5)(b)2. In most of the current situations, if the child is at least one but less than six, the limit is 191% of the federal poverty level; if the child is at least six but less than 19, the limit is 156% of the federal poverty level. *BadgerCare Plus Handbook*, §7.1.2.

Thus, because the 7 year old is subject to the 156% rule, he is ineligible for BCP when there is access to the insurance. Petitioner points out that her children require autism services which her husband's employer sponsored insurance does not cover. While I understand her hardship, I must apply the law as it is written, and there is no exception for persons in this situation. It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable or fairness arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Therefore, I would uphold the agency's decision to end her child's eligibility for the BCP based on the foregoing. However, what I cannot tell is if the agency properly determined the income given a report by the petitioner to the agency that they have student loan interest payments, as acknowledged at hearing. As the hearing took place before the negative action in May, the report would have been made prior to that as well, and may have affected May's benefits. The *BCP Handbook* provides for student loan interest payments as expenses to be deducted from the income. *BCP Handbook*, §16.3.3. Any change that is reported to the agency must be acted upon. *BCP Handbook*, §27.4. The agency agreed that the expense needed to be verified. See *BCP Handbook*, §9.9.9. When a change is reported that requires verification, the member must be notified in writing of the specific verification required and allowed a minimum of ten days to provide it. See *BCP Handbook*, §9.4. As this did not occur, I am remanding this matter so that the agency can request verification of the student loan expense to see if it changes the income level, which may impact the FPL so that the 7 year old may be found eligible.

CONCLUSIONS OF LAW

The agency failed to meet its burden to show that it properly terminated petitioner's 7-year-old son's BadgerCare Plus effective May 1, 2016.

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to request verification of the petitioner's student loan expense per BCP policy §9.4, and if that verification is received timely, to redetermine petitioner's 7-year-old son's BadgerCare Plus effective May 1, 2016 and ongoing, and to issue written notice to petitioner regarding same. Because verification of information is necessary to determine eligibility and the petitioner must be given 10 days to verify, these actions are to be completed within 30 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of June, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 9, 2016.

Outagamie County Department of Human Services
Division of Health Care Access and Accountability